

**Remarks**

**I. Introduction**

Claims 1-63, 74-84 and 90-102 are pending in this application. By this amendment, claims 1, 3, 7, 9, 10, 16, 24, 28, 33-35, 39, 42, 47, 55, 57, 59, 74, 77 and 100-102 have been amended to more particularly distinguish over the art of record. Reconsideration in view of the foregoing amendments, following remarks and attached Declaration of Applicant under 37 C.F.R. § 1.132 is respectfully requested.

**II. Rejections of the Claims**

Claims 1, 2, 7-15, 21, 23-27, 30, 32-46, 52, 54-58, 61, 63, 74-82, 90-97 and 99-102 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent 6,840,643 to Smith et al. (hereinafter "the Smith patent"); and claims 3-6, 16-20, 28, 29, 31, 47-51, 53, 59, 60, 62, 83 and 98 stand rejected under 35 U.S.C. § 103(a) over the Smith patent. Applicants respectfully traverse the rejections.

At the outset, Applicants note that while the system of the Smith patent and the claimed invention are similar to the extent that data from native accounting systems is submitted electronically to a server system where it is converted, there are several substantial, non-obvious distinctions between the two systems. As is discussed below in the context of the independent claims, the system embodied by the claims of this invention provides simplified submission and conversion by using a trial balance report containing an entire reconciliation of accounts, provides accounting industry standardized, metric-based, complete financial reporting on private companies, provides a database of such standardized private company data across the receiving companies entire portfolio, and provides an interactive, web-based, dashboard interface detailing historical trends for one or more of the performance metrics. The dashboard interface allows not only the receiving business, but also the submitting business

to visualize their company's performance, generate detailed historical reports, set variance alerts to be notified of changes or trends, and to compare the business' performance against that of its peers. The ability to perform private company benchmarking that is truly meaningful, that is, apples-to-apples comparisons, is a significant benefit to both receivers and submitters of data on the system and a feature not present in the system of the Smith patent. Benchmarking is partially enabled by the fact that the system of the present invention includes operational data as well as financial data. The Smith patent is limited to obtaining those financial reports necessary for a bank to monitor the status of its collateral. It is not a financial information sharing network for establishing a uniform, industry standardized database of private company financial performance information.

**A. Independent Claims 74 and 90 and dependent claims 75-84, 91-99**

The Office Action lumps the rejection of these claims together with that of claims 1, 2, 7-15 and 21-23 asserting that "...these claims recite substantially similar subject matter." Applicants strenuously disagree with this assertion. Claim 74 recites, *"benchmarking performance information associated with a first business based at least in part on a comparison of the performance information associated with the first business with at least one of the one or more representative performance metrics of the aggregated information."* Similarly, claim 90 recites, *"automated means for benchmarking performance information associated with a first business based at least in part on a comparison of the performance information of the first business with at least one of the one or more representative performance metrics."* The other claims lumped together with the rejection of these claims do not refer to benchmarking. Benchmarking in this context is comparing the value of a metric for one company against the value for other companies in the database. This is enabled in part by the metric-based, accounting industry standardized database of regularly updated performance information submitted by all the participating companies. Thus, because the

Examiner did not specifically address this claim feature in the Office Action, the rejection of these claims as well as their dependent claims was improper.

The Smith patent, at col. 18, lines 4-12, states, “historical and industry specific information can be used to detect aberrations in the borrowing customer’s performance.” However, no mention is made of where the historical and/or industry specific information comes from. In the system of the claimed invention, the metrics corresponding to aggregate information of other businesses whose submitted information is in the system are used for benchmarking an individual submitting business. This provides receiving institutions the ability to benchmark their customers/clients performance information against their other customers/clients. This also allows submitting companies to compare their own performance to that of their peers — a valuable service not previously available to private companies. This feature is neither disclosed nor obvious in view of the brief mention of “using historical or industry-specific information to detect aberrations” in the Smith patent. Thus, Applicants respectfully submit that these claims are patentable over the Smith patent. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

**B. Independent Claims 1, 24, 55 and 102**

These claims recite systems and methods for gathering and/or managing business performance data comprising, inter alia, electronically receiving trial balance information associated with a business in a first format at a remote computer system over the Internet; converting the data in the file from the first format to a second standardized format using an automated conversion mapping process, aggregating the converted data in a database with converted data of at least one other business thereby creating a standardized database of private company performance information across a receiving entity’s financial portfolio that comports with generally accepted accounting principles, analyzing the

converted performance information based at least in part on one or more performance metrics, and generating at least one report based on the results of analyzing for the submitting business. These claims currently stand rejected under § 102(e) as being anticipated by the Smith patent.

The Smith patent describes systems and methods for collateral risk monitoring that collect borrower submitted financial information, convert the financial information in arbitrary document formats to predefined formats for use in an automated analysis and reporting process. The conversion process involves detecting the report type, mapping and translating the report information to a standardized form, populating a data repository with the financial details and summary information. The reporting and analysis tools used are standard off the shelf products.

One distinction between the Smith patent and claims 1, 24, 55 and 102 is that the former requires the user to submit a variety of different financial reports while the latter accepts a trial balance report. Because the trial balance report contains a complete listing of all credit and debit entries from the general ledger, this report alone is sufficient for the systems and methods of the claimed invention to perform detailed financial analysis — that is, the trial balance provides the information sufficient to assemble a complete financial report. Furthermore, by using a trial balance report, the process of conversion is greatly simplified over that of the Smith patent because the type of financial report is known. This would not have been obvious in view of the Smith patent because the Smith patent is only concerned with accounts receivable, accounts payable and inventory positions. Accordingly, the system of the Smith patent takes several different types of reports relevant to these accounts. The kinds of detailed metric-based, accounting industry standardized reporting is not possible with the small amount of data provided in the system of Smith patent.

Another feature not described in the Smith patent is aggregating the converted data in a database with converted data of other businesses thereby creating a standardized database of private company performance information across a receiving entity's financial portfolio that comports with generally accepted accounting principles. While the Smith patent does teach placing submissions into a data store, and further, that this provides the lender with the opportunity to perform in-depth analysis of the customer data across their entire portfolio, the system in the Smith patent does not provide an aggregated database of private company data that provides a complete financial picture - that is, comports with GAAP reporting standards. Because the Smith patent is primarily concerned with collateral risk exposure, it does not address complete financial reporting. This system is not designed to provide a universal reporting and analysis mechanism for typically non-reported (private, non-profit, etc.) financial information so that receiving companies, as well as submitting businesses, can have access to the kind of information on their private company partners that has historically been limited to public companies, due to their statutory and regulatory reporting requirements.

Still another distinction between the system described in the Smith patent and that of the claimed invention are the benefits to the submitter business. The system of the Smith patent is a compliance tool designed to benefit the lending institution by enabling it to monitor its collateral. The system of the claimed invention incentivizes the submitter business to submit their data frequently by providing detailed, customizable financial metric-based analyses and reports to the submitter through the dashboard interface. Thus, businesses want to supply their data because of the benefits they receive. This extends the market of the system of the claimed invention beyond that of just lending institutions, but also to CPA and business advisor firms whose clients rely on them to advise them

and monitor their overall financial health. The system of the Smith patent fails to provide these benefits.

Thus, the system of Smith does not provide for general financial reporting of private company performance information, nor standardization and aggregation of information into formats compatible with generally accepted accounting principles (GAAP), nor reporting and analysis tools that benefit the submitting company as well as the receiving one. Rather, the system in the Smith patent is only concerned with a bank receiving sufficient reports to monitor the status of a borrower's collateral. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

### **C. Independent Claims 33 and 100**

These claims recite a system and method respectively for automated management of private company performance information that comprises, *inter alia*, obtaining performance information associated with a business, the performance information comprising data taken from that business' general ledger accounting system and having a user-defined format, converting the performance information from the user-defined format to a standardized format, aggregating the converted performance information with performance information associated with at least one other business, analyzing the converted performance information, and generating at least one electronic report based on the analyzing, wherein generating a report comprises generating a web page based analysis dashboard for visualizing results of the analyzing, the dashboard detailing at least one historical trend for one or more performance metrics associated with the business for the business.

According to the Examiner in the Office Action, the Smith patent teaches generating at least one electronic report based on the results of the analyzing and

that the reports are generated for printing as well as interactive online use. However, the Smith patent is vague as to the type of reports. At col. 4, lines 24-33, the Smith patent describes using commercial-off-the-shelf (COTS) risk analysis and reporting software tools that are "well known and commercially available." Nowhere does the Smith patent describe an analysis dashboard that details at least one historical trend for one or more performance metrics of the business. The dashboard, as described in the specification and Figures of the instant application, provides a unique, interactive, data, graph and control interface that permits visualization of private company performance information in a familiar, public company financial reporting-style interface. This feature would not have been obvious in view of the standard off-the-shelf analysis reporting capability of the system described in the Smith patent which are geared towards risk analysis. Also, as discussed above in the context of independent claims 1, 24, 55 and 102, the Smith patent fails to teach generating at least one report based on the results of the analysis for the benefit of the submitter business - that is, the business with which the performance data is associated with. Therefore, in view of these numerous distinctions, Applicants respectfully requested that the rejection of these claims be withdrawn.

**D. Independent Claim 101, dependent claims 3, 16, 28, 35, 47, 59, 77**

Independent claim 101 recites in the context of a business performance information management system, generating an alert if results of analyzing indicates that at least one performance metric of the converted performance information varies from a corresponding predetermined value by more than an adjustable predetermined threshold. The Office Action relies upon Smith to teach use of alerts. At col. 4, line 66 to col. 5, line 2 the Smith patent discloses sending alerts to a user to notify them of pending information and/or actions that either require attention or that may be of interest (e.g. risk assessment reports). Further, the Office Action refers to col. 18, lines 1-18 which, as

discussed above, refers to using historical and industry-specific information to detect aberrations in the borrowing customer's performance. However, these two distinct passages of Smith fail to render obvious the specific claim feature of generating an alert if/when the analysis indicates that one or more performance metric varies from a predetermined value by more than an adjustable predetermined threshold set by the submitting business or business requesting the alert. In the first passage of the Smith patent, alerts can be generated to either notify someone of pending action or results. In the second passage, in performing analysis, performance can be compared against historical or other performance. Nowhere, does the Smith patent discuss or even suggest that an alert may be automatically generated when a performance metric varies by more than an adjustable predetermined threshold. Rather than merely looking at levels or values, which, when viewed statically, may not reveal underlying trends, alerts in the context of the present invention, draw immediate attention to trends, both positive and negative — that is, changes or variances in a performance metrics that exceed an adjustable predetermined level. This allows the intended viewer of the analysis — the submitter, a bank employee, a CPA firm employee, etc. — to set their own variance threshold, and even to adjust it from time to time, that will generate an alert depending upon their own tolerance for variance. Thus, while in the system of the Smith patent, A/R, A/P and inventory analysis may create the impression that a lender's collateral is safe, the fact that the company's quarter-over-quarter revenue growth is decreasing by 10 percent may be an early indication of underlying problems that could ultimately put the lender's collateral at risk. A key component of the system of the various embodiments of the present invention is to provide lenders, CPA firms, submitters or other receiving entities access to regularly updated, standardized and useful (that is, based on the reporting standards required by public companies which most often serve as a basis for performing financial analysis)



information for monitoring the overall business performance of their customers/borrowers, or themselves. The submitting businesses are predominately private companies. As noted in the specification of this application, due to a lack of performance reporting requirements in the private company sector, prior to the invention of this system, such entities were dependent on inaccurate third-party evaluations or potentially incomplete self-disclosures. The system of the Smith patent utilizes some of the features of the systems and methods according to the claimed invention, that is electronic collection of financial information from native accounting systems, conversion and analysis, but fails to fully leverage the system to provide robust, standardized financial reporting for private companies and to incorporate features such as aggregation, metric variance-based alerts, and trial balance-based submission (simplifying conversion and submission and guaranteeing complete data) and is unnecessarily cumbersome (requiring a variety of different financial reports to be submitted). Accordingly, due to the unique and non-obvious benefits accorded by the systems and methods of the claimed invention, Applicants respectfully submit that the claims are amended are patentable over the Smith patent. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

**E. Dependent Claims 23, 32, 54, 63, 84 and 99**

While it is respectfully submitted that each of theses claims are patentable over the Smith patent for the same reasons as discussed above in the context of the independent claims, Applicants also these claims are patentable over the Smith patent for additional reasons. In particular, Applicants submit that the Smith patent fails to disclose obtaining operational information or operational classifications on the submitting business. The original specification of this application distinguishes operational information from performance information at Paragraph 32: “... *and may include operational information related to the*

*operation of a business, such as, for example, the number of stores, the average square footage of the stores, cycle times, number of customers served, etc."*

Operational classifications are defined in the original specification at Paragraph 67: *"The representative performance metrics 416 may be identified for any number or combination of financial accounts or operational performance classifications. For example, to perform a benchmark analysis of the net profit of a dry cleaning business having fewer than one hundred employees and operating in California, appropriate representative indicators 416 for this benchmark analysis may include, for example, the average net profit for all dry cleaning businesses represented in the aggregate information database 402."*

There is no disclosure or even suggestion of operational information or operational classifications in the Smith patent. Operational information and classification are particularly important for performing benchmarking and making other comparisons between businesses that are similarly situated, that is, have similar operational characteristics. These types of comparisons are generally more meaningful as performance trends may vary between different types of businesses. The ability to perform these types of comparisons using operational data and classifications is not provided by the system described in the Smith patent.

**F. Remaining Claims 2, 4-15, 17-22, 25-31, 34-53, 56-62**

It is respectfully submitted that the remaining dependent claims are patentable over the Smith patent for at least the same reasons as independent claims 1, 24, 33 and 55 as discussed above. Accordingly withdrawal of the rejection of these claims is also requested.

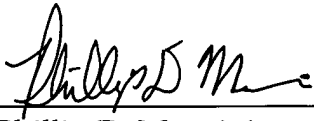
## II. Conclusion

Applicants submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of all pending claims are earnestly solicited. Should the Examiner deem anything further to be required in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

HUNTON & WILLIAMS

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